

EXHIBIT A

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

JANINE CHANDLER, et al.,

Plaintiffs,

v.

CALIFORNIA DEP'T OF CORRECTIONS
AND REHABILITATION, et al.,

Defendants.

Case No. 1:21-cv-01657-JLT-HBK

**PROPOSED INTERVENORS'
[PROPOSED] SUPPLEMENTAL
REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO STRIKE**

Judge: Hon. Jennifer L. Thurston
Courtroom: 4, 7th Floor

1 **I. INTRODUCTION**

2 In response to Defendants’ very narrow “factual attack” on one of Plaintiffs’ specific
 3 allegations, Plaintiffs attempted to introduce far-ranging factual material completely unrelated to
 4 that attacked allegation, including by introducing inadmissible rumors of a sexual assault by a
 5 specific transgender woman incarcerated in a CDCR women’s facility. Dkt. No. 36. Then, in
 6 response to Defendants’ Motion to Strike, Plaintiffs for the first time explicitly asked this Court to
 7 look to extrinsic evidence and resolve disputed facts beyond the scope of Defendants’ narrow
 8 “factual attack.”

9 Counsel for Proposed Intervenor have now obtained a sworn declaration by the alleged
 10 “victim” of that assault stating clearly and explicitly that no such assault occurred and showing
 11 the accusations to be false. Proposed Intervenor reiterate their earlier explanations why this
 12 Court should not consider Plaintiffs’ declarations, which are both inadmissible and improper, and
 13 their request that “[i]n the unlikely event that this Court considers” them, they be given “notice
 14 and ‘a fair opportunity to present material relevant.’” Dkt. No. 40 n.10 (quoting *In re Mortg. Elec.*
 15 *Registration Sys., Inc.*, 754 F.3d 772, 781 (9th Cir. 2014)). But in light of Plaintiffs’ June 16
 16 request (in their second Opposition brief) that the Court consider the Motion to Dismiss under a
 17 Rule 56 standard, and being in possession of a declaration that clearly demonstrates these
 18 accusations to be false, Proposed Intervenor must also correct the record before the Court. Dkt.
 19 No. 41.

20 **II. ARGUMENT**

21 In their Motion to Dismiss, Defendants raised a very narrow “factual attack” against
 22 Plaintiffs’ free expression claim. Dkt. No. 15 at 8. Rather than “support [their] jurisdictional
 23 allegations with ‘competent proof,’” Plaintiffs introduced far-ranging factual material in the form
 24 of twelve declarations, nearly all of which are inadmissible and none of which were relevant to
 25 the specifically attacked jurisdictional allegation, as is explained more thoroughly in Proposed
 26 Intervenor’s earlier briefs. *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014) (quoting
 27 *Hertz Corp. v. Friend*, 559 U.S. 77, 96–97 (2010)) (citation omitted); *see* Dkt. No. 32; Dkt. No.
 28 40.

1 In their Motion to Dismiss briefing, Proposed Intervenor explained that this Court should
 2 not look to Plaintiffs’ extrinsic evidence, but that if it were inclined to do so, they requested
 3 “notice and ‘a fair opportunity to present material relevant,’ including evidence to dispute
 4 Plaintiffs’ rumors of a sexual assault against an anonymous third party. Dkt. No. 40 n.10
 5 (quoting *In re Mortg. Elec. Registration Sys., Inc.*, 754 F.3d 772, 781 (9th Cir. 2014)). For their
 6 part, Defendants have moved to Strike Plaintiffs’ Declarations. Dkt. No. 38. In response to
 7 Defendants’ Motion to Strike, Plaintiffs filed their Opposition on June 16, and for the first time
 8 explicitly requested that this Court look to all of the extrinsic evidence and resolve disputed facts
 9 under a Rule 56 standard. Dkt. No. 41.¹

10 One aspect of the improper factual material relevant here was Plaintiffs’ efforts to “exploit
 11 this litigation to propagate a baseless claim of sexual assault” by a specific transgender woman—
 12 what Plaintiffs referred to as the “May 2022 Alleged Rape.” Dkt. No. 40 at 1; Dkt. No. 36 at 6.
 13 Plaintiffs’ briefs and declaration identified this transgender woman, Syiaah, by one of the other
 14 names that she has used.

15 On June 29, 2022, counsel for Proposed Intervenor received a declaration by Asia
 16 Davis—the “A.D.” who Plaintiffs’ declarations claim was assaulted—showing that the “May
 17 2022 Alleged Rape” simply did not happen. In it, Ms. Davis clearly and explicitly denies that any
 18 assault took place. *See* Davis Decl. Ms. Davis explains that she is the person who Plaintiffs’
 19 briefs and declarations describe who needed medical attention “[o]n the afternoon of May 19,
 20 2022.” Davis Decl. ¶5. That day, she “became dizzy and nauseous” and “went to the porta-potty
 21 to vomit” due to “the lack of food, heat, and dehydration.” Davis Decl. ¶5–7. Syiaah, who the
 22 declarant describes as a “close friend,” was “concerned for [her]” and “entered the porta-potty as
 23 well, and rubbed [her] back.” Davis Decl. ¶3, 6. After Syiaah left the porta-potty, Ms. Davis
 24 heard others yelling and questioning Syiaah’s presence in the porta-potty with her. Davis Decl.

25 ¹ It is within the Court’s discretion to consider a declaration submitted in Reply where it is a
 26 “reasonable response” to the opposition. *United States ex rel. Doe v. Biotronik, Inc.*, No. 2:09-
 27 CV-3617-KJM-EFB, 2015 WL 6447489, at *3 (E.D. Cal. Oct. 23, 2015), *aff’d in part, appeal*
 28 *dismissed in part on other grounds sub nom. United States ex rel. Sant v. Biotronik, Inc.*, 716 F.
 App’x 590 (9th Cir. 2017).

¶8. Ms. Davis was assisted back to her room by others, asked her if Syiaah had hurt her; she responded that Syiaah “had not hurt me.” Davis Decl. ¶9.

The next day, Ms. Davis learned that Syiaah had been accused of sexually assaulting her. Davis Decl. ¶12. When a CDCR investigator questioned the declarant about this allegation, she told them that Syiaah was her “best friend” and that Syiaah “*did not and would never hurt me.*” Davis Decl. ¶13 (emphasis added). Later, a group of individuals were “agitated and claiming [Syiaah] had raped” Ms. Davis, and Ms. Davis told the group that Syiaah “had not harmed [her] at all.” Davis Decl. ¶16. Nonetheless, members of that group continued to insist, despite her repeated denial, that Syiaah had raped her. Davis Decl. ¶17. “As the rumor . . . spread,” Ms. Davis “repeatedly informed everyone who asked” that Syiaah “had not harmed [her] and would never harm [her].” Davis Decl. ¶18. Nonetheless, these false and baseless rumors found their way into Plaintiffs’ briefing and declarations. *See* Dkt. No. 36.

CONCLUSION

For all of the reasons explained by Proposed Intervenors and Defendants in the Motions to Dismiss and Strike briefing to date, this Court should not consider Plaintiffs’ declarations. But in the event that it does, Ms. Davis’ declaration makes clear that Plaintiffs’ accusations are not just inadmissible and inappropriate. They are false.

Dated: July 5, 2022

Respectfully Submitted,

By: s/ Nora Huppert

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